

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WISCONSIN

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ROBERT LEE STINSON,

Plaintiff,

v.

Case No. 09-cv-1033-pp

JAMES GAUGER *et al.*,

Defendants.

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**ORDER RULING ON PLAINTIFF'S OBJECTIONS TO DEFENDANT  
JOHNSON'S DIRECT TESTIMONY VIDEO DEPOSITION (DKT. NO. 342) AND  
DEFENDANT'S OBJECTIONS TO CROSS (DKT. NO. 348)**

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The plaintiff makes a “global” objection to the entire direct examination as leading. Dkt. No. 342 at 1. He asks the court to strike the direct examination in its entirety. *Id.* at 2. The court agrees with the plaintiff that many of defense counsel’s questions are leading in the classic sense, and many others are less than open-ended. Given the representations in the defendant’s response (dkt. no. 347) and the representations defense counsel has made about the defendant’s health issues throughout the twenty-one months the court has been assigned this case, the court **OVERRULES** that “global” objection and **DENIES** the plaintiff’s motion to strike.

Designation	Objection	Ruling
<i>Page/Line of Direct Exam</i>	<i>Plaintiff's Objections</i>	
298:1-21	Preserve plaintiff’s objections to the use of Dr. Johnson’s CV as hearsay per plaintiff’s MIL no. 11	Overruled.
329:18-24	Rule 611—improper leading on direct exam	Overruled.
330:10-12	Form “formal scientific opinion”	Overruled.
331:6-10	Fed. R. Evid. 611(c) –improper leading on direct exam, Form “formal scientific analysis”	Overruled.

339:9-16	Rule 611(c)—improper leading on direct exam, Form “generally consistent”	Overruled.
340:19-341:2	Rule 611(c)—improper leading on direct exam	Overruled.
347:19-24	Rule 611(c)—improper leading on direct exam, Form	Overruled.
348:4-10	Rule 611(c)—improper leading on direct exam, Form	Overruled.
348:13-18	Rule 611(c)—improper leading on direct exam, Form, improper vouching for an expert	Overruled.
348:19-24	Rule 611(c)—improper leading on direct exam, Form, improper vouching for an expert	Overruled.
349:1-19	Rule 611(c)—improper leading on direct exam, Form, improper vouching for an expert	Overruled.
352:2-12	Rule 611(c)—improper leading on direct exam, Form, improper vouching for an expert	Overruled.
354:1-15	Rule 611(c)—improper leading on direct exam, Form, improper vouching for an expert	Overruled.
355:22-25— 356:1-16	Rule 611(c)—improper leading on direct exam, Form, MIL No. 1—bar Morgan Report	Overruled—no connection to the court’s ruling barring the Morgan report.
357:19-24	Rule 611(c)—improper leading on direct exam, Form	Overruled.
360:16-24	Rule 611(c)—improper leading on direct exam	Overruled.
361:19-25 (should be 19-24)	Rule 611(c)—improper leading on direct exam, Form	Overruled.
362:6-10	Rule 611(c)—improper leading on direct exam, Form	Overruled.
362:23-25 – 363:1-12	Rule 611(c)—improper leading on direct exam, Form	Overruled.
363:21-25	Form	Overruled.

364:1-8	Rule 611(c)—improper leading on direct exam, Form	Overruled.
369:8-14	Form	Overruled.
371:1-7	Rule 611(c)—improper leading on direct exam, Form	Overruled.
372:16-23	Rule 611(c)—improper leading on direct exam, Form	Overruled.
374:1-6	Foundation	Overruled (“To your knowledge”)
374:19-23	Rule 611(c)—improper leading on direct exam, Form	Overruled.
375:1-11	Rule 611(c)—improper leading on direct exam, Form	Overruled.
377:3-8	Rule 611(c)—improper leading on direct exam, Form	Overruled.
378:1-25	Rule 611(c)—improper leading on direct exam, Form	Overruled.
379:1-4	Rule 611(c)—improper leading on direct exam, Form	Overruled—no question to which the objection could refer.
380:23-381:6	Rule 611(c)—improper leading on direct exam, Form, MIL No. 1—Bar Morgan Report	Sustained.
383:20-384:3	Rule 611(c)—improper leading on direct exam, Form	Overruled.
388:4-9	Rule 611(c)—improper leading on direct exam, Form	Overruled.
389:13-18	Rule 611(c)—improper leading on direct exam, Leading, and Foundation	Overruled.
389:19-25	Rule 611(c)—improper leading on direct exam, Leading	Sustained.
390:22-391:3	Rule 611(c)—improper leading on direct exam, Leading, and Foundation	Overrule.
391:7-14	MIL No. 2, Daubert Order Dkt. No. 287	Sustained.
391:23-392:3	Form, Rule 611(c)—improper leading on direct exam	Overruled.
393:3-394:1	Form, Foundation, Rule 611(c)—improper leading on direct exam, MIL No. 2, Daubert Order Dkt. No. 287	Overruled.


396:25-397:15	Rule 611—improper leading on direct exam, Foundation, Daubert Order Dkt. No. 287—bar opinion on role of cross examination and bar Morgan Report; MIL No. 1	Sustained as to 396:25-397:4—strike.  Overruled as to 397:7-15.
397:23-398:1	Form, Foundation, Daubert Order Dkt. No. 287, bar opinion on role of cross examination and bar Morgan Report; MIL No. 1	Overrule—397:23-25 already stricken, 398:1 allowed.
398:3-8	Form, Rule 611(c)—improper leading on direct exam	Overruled.
399:6-12	Form, Rule 611(c)—improper leading on direct exam	Overruled.
399:13-18	Form, Rule 611(c)—improper leading on direct exam, MIL No. 1	Sustained—strike 399:13-18, as well as 19-25.
400:1-11	MIL No. 1, FRE 801	Overrule—nothing but a statement that counsel is handing the witness a document.
400:22-402:23	MIL No. 1	Overrule as to 400:22-401:22.  Overrule as moot as to 401:23-25, 402:1-3—already stricken.  Sustain as to 402:5-24—strike.  The court will not admit Exhibit 289—hearsay.
403:1-404:12	MIL No. 1	Sustained—strike.
405:2-7	Form, Foundation, Rule 611(c)—improper leading on direct exam	Overruled.
406:9-12	Form	Overruled.
406:22-25	Form	Overruled.
413:3-9	MIL No. 1	SUSTAINED—strike.
414:6-11	Rule 611(c)—improper leading on direct exam	Overruled.
415:20-416:3	Form	Overruled.

416:18-24	Rule 611(c)—improper leading on direct exam, Form	Overruled.
416:25-417:11	Foundation	Overruled.
418:19-24	Form, Rule 611(c)—improper leading on direct exam	Overruled as to 418:19-23.  Overruled as moot as to 418:24—already stricken.
419:1-11	Rule 611(c)—improper leading on direct exam,	Overruled.
420:12-22	Rule 611(c)—improper leading on direct exam	Overruled.
424:1-425:2	Foundation, Dkt. No. 287—improper testimony as to the qualifications of an expert	Overruled.
425:3-10	Foundation; Dkt. No. 287—improper testimony on the qualifications of an expert	Overruled.
426:17-24	Form, Foundation	Overruled.
426:25-427:5	Form	Overruled.
428:14-19	Rule of Completeness, FRE 106	Sustained—do not strike.
428:25-429:4	Rule 611(c)—improper leading on direct exam	Overruled.
430:10-15	Rule 611(c)—improper leading on direct exam, Form	Overruled.
430:17(should be 16)-22	Rule 611(c)—improper leading on direct exam, Form	Overruled.
430:23-431:25	Foundation, Form, Rule 611(c)—improper leading on direct exam, Dkt. No. 287—barring testimony on state of mind, MIL No. 3	Overruled.
431:14-19	Form, Foundation, Rule 611(c)—improper leading on direct exam	Overruled.
431: 20-432:4	Form, Rule 611(c)—improper leading on direct exam	Overruled.
432:5-14	Form, Foundation	Overruled.
432:17-433:1	Form, Foundation	Overruled.
433:2-12	Form, Foundation, MIL No. 1 – Morgan Report; Dkt. No. 287	Sustained as to 297 (no relation to Morgan report)—strike.

433: 16-25	Dkt. No. 287; MIL No. 2— improper state of mind	SUSTAINED—strike.
<i>Page/Line of Cross Exam</i>	<i>Defendant's Objections</i>	
436:22-23	Mischaracterizes Dr. Johnson's prior testimony; no prior testimony that Dr. Johnson had his work product overlays continuously in his possession for 20 years beginning in January of 1990.	Sustained as to lines 20-21, starting with "and you had them for two decades."
438:18-20	Foundation: No evidence that Dr. Johnson had continuous possession of all his work product from 1985.	Overruled.
441:5-8	Foundation: Exhibit 203, p. 520 is not Dr. Johnson's document.	Overruled.
442:9-12	Mischaracterizes testimony; Dr. Johnson never testified that he evaluated suspects for Gauger and Jackelen.	Sustained—witness never answered the question. Strike 442:9-15.
442:21-22	Mischaracterizes testimony; Dr. Johnson never testified that he evaluated suspects or photographs for Detectives Gauger and Jackelen.	Overruled.
449:21	Relevance.	Overruled.

Dated in Milwaukee, Wisconsin, this 21st day of June, 2019.

**BY THE COURT:**

  
**HON. PAMELA PEPPER**  
**United States District Judge**